No. 2177

United States
Circuit Court of Appeals
For the Ninth Circuit.

C. M. SUMMERS,

Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA,

Defendant in Error.

Petition for Rehearing.

LOUIS P. SHACKLEFORD,

Attorney for Plaintiff in Error.

FILMER BROS. CO. PRINT, 330 JACKSON ST., S. F., CAL.

In the United States Circuit Court of Appeals for the Ninth Judicial Circuit.

No. 2177.

C. M. SUMMERS,

Plaintiff in Error,

—against—

UNITED STATES OF AMERICA,

Defendant in Error.

Petition for Rehearing.

To the Honorable, the United States Circuit Court of Appeals for the Ninth Judicial Circuit.

Comes now C. M. Summers, plaintiff in error above named, and respectfully petitions this Court for a rehearing of the above-entitled cause and respectfully shows to the Court:

FIRST: That a rehearing of the above-entitled cause should be granted, for the reason that the third specification of error was not considered or discussed in the opinion of the Court; and, in support of this ground for rehearing your petitioner respectfully shows to the Court that under the rulings of the Supreme Court of the United States in the case of Callan vs. Wilson, 127 U. S. (page 540), Thompson vs. Utah, 170 U. S. (page 343), Rasmuson vs. United States, 197 U. S. (page 516), and Schick vs. United States, 195 U. S. (page 65), a judgment of conviction in a criminal case other than a petty offense is void unless supported by a verdict of a jury of twelve and a jury trial cannot be waived even by express stipulation. Under the decision in the case of Callan vs.

Wilson, *supra,* the question must either be decided in this case or in *habeas corpus* proceedings; that, for the sake of expedition and justice, this question should be decided in this cause and not left for decision through a multiplicity of suits.

SECOND: Your petitioner respectfully requests that a rehearing be had upon the ruling of this Court sustaining the ruling of the lower Court with reference to the petitioner's demurrer to the indictment, and your petitioner respectfully shows to the Court that the question involved in this case depends upon the question as to whether section 1024 of the Revised Statutes of the United States has application to the territories and territorial courts; and your petitioner respectfully urges and claims that under the rulings of this Court in Corbus vs. Leonhardt, 114 Federal (page 10), Jackson vs. United States, 102 Federal (page 473), and the rulings of the Supreme Court of the United States in the cases of Good vs. Martin, 95 U. S. (page 90), Thiede vs. Utah, 159 U. S. (page 510), Hornbuckle vs. Toombs, 18 Wall. (page 648), Reynolds vs. United States, 98 U. S. (page 145), the law is that all general statutes of procedure found in the Revised Statutes which upon their face do not exhibit a specific intention on the part of Congress to have them apply to the territorial courts, are presumed to apply only to procedure in Federal, Circuit and District Courts.

And your petitioner further requests a rehearing upon the questions raised by the demurrer to the indictment, upon the ground that this Court has failed to consider that portion of the Act of May 17, 1884,

providing for civil government for Alaska, which placed the district attorneys for Alaska upon a salary and made those statutes relating to the fee system and the conduct of district attorneys in connection therewith inapplicable to Alaska.

Your petitioner further shows that this Court has failed in its opinion to consider the provisions of the Act of March 4, 1909, being the new Penal Code of the United States, under chapter entitled "Certain offenses in the Territories," and that section of that chapter which permits the joinder in one indictment of only certain offenses therein named.

Petitioner further asks to be made a part hereof a brief of his attorney in support of this petition, which will be filed herein.

C. M. SUMMERS,
Petitioner.

By LEWIS P. SHACKLEFORD,
His Attorney.

The undersigned, one of the attorneys for the petitioner, C. M. Summers, hereby certifies that in his judgment the foregoing petition is well founded and that it is not interposed for delay.

LEWIS P. SHACKLEFORD.